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| 10/576,545 | 07/05/2006 | Stephane Tuffin | 127745 | 3849 |

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| EXAMINER |
|---|
| CHAO, MICHAEL W |

| ART UNIT | PAPER NUMBER |
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| 2442 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| | Application No. | Applicant(s) |
| **Office Action Summary** | 10/576,545 | TUFFIN ET AL. |
| | Examiner | Art Unit | |
| | Michael Chao | 2442 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>26 April 2007</u>.

2a)☐ This action is **FINAL**.    2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-17</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-17</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All    b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

# DETAILED ACTION

## *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Clam 8 contains means for estimating, means for comparing, and means for authorizing, which are software elements. Software elements are none of a process, machine, manufacture, nor composition of matter. Since claim 8 contains only these elements it is not statutory.

## *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph.

Claim 6 recites the limitation "processor server". There is insufficient antecedent basis for this limitation in the claim. It has been interpreted to be "monitoring server"

Claims 1-17 contain references to the drawings. Incorporation by reference to a specific figure or table "is permitted only in exceptional circumstances where there is no practical way to define the invention in words and where it is more concise to incorporate by reference than duplicating a drawing or table into the claim. Incorporation

by reference is a necessity doctrine, not for applicant's convenience." Ex parte Fressola,

27 USPQ2d 1608, 1609 (Bd. Pat. App. & Inter. 1993) (citations omitted)


### *Claim Rejections - 35 USC § 103*

Claims 1, 4, 7, 8, 9, 15, are rejected under 35 U.S.C. 103(a) as being

unpatentable over Benveniste et al. (US 2005/0009533), in view of Shankar et al. (QoS

Signaling for Parameterized Traffic in IEEE 802.11e Wireless LANs).

With respect to claims 1, 8, Benveniste teaches: A method of monitoring

multimedia stream exchange session initialization messages transmitted in packet

mode via a monitoring server (20, 22) over a network (18) between a sender terminal

(10) and one or more receiver terminals (12), characterized in that it comprises the

following steps:

comparing (52) that value to a maximum authorized bit rate value; and (The

access point will either accept or decline the request, depending on the available

bandwidth. If the request is declined the station may not transmit with the privileges of

the traffic class indicated in the TSPEC." Benveniste paragraph [0012])

authorizing (40) transmission of the initialization packet only if the bit rate value

for that initialization packet does not exceed the maximum authorized bit rate value.

("either accept or decline the request" Beneviste paragraph [0012])

Benveniste does not explicitly disclose that the TSPEC is an estimate of the

required bandwidth.

Shankar discloses such a definition in Figure 5 "Traffic Specification Element";
specifically 'Minimum Data Rate' and 'Mean Data Rate'.

A person of ordinary skill in the art would have modified the invention of
Benveniste by using the TSPEC definition of Shankar.

It would have been obvious at the time the invention was made to a person of
ordinary skill in the art to make this modification in order to notify a system of the
expected requirements of a communication flow.

Regarding claims 4, 9, Benveniste teaches: monitoring messages transmitted in
packet mode, implemented by the monitoring server (20, 22), which also processes
session initialization packets. ("Gateway 306 intercepts the CS-TSPEC request"
Benveniste paragraph [0064])

Regarding claims 7, 15, Benveniste teaches: wherein the session initialization
messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation
Protocol Benveniste paragraph [0004])

Claims 2, 11, 13, are rejected under 35 U.S.C. 103(a) as being unpatentable
over Benveniste, in view of Shankar, in further view of Vaid et al. (US 5,502,131).

Concerning claim 2, Benveniste, in view of Shankar teaches substantially the
claimed limitations, as shown under claim 1. Concerning the further limitations of claim
2, this combination does not explicitly state that there are endpoint defined bandwidth
limits.

Vaid discusses endpoint defined (Sender, receiver. Vaid column 27 line 32)

bandwidth limits ("bandwidth allocated" Vaid column 27 line 33.)

A person of ordinary skill in the art would have modified the available bandwidth

calculation of Benveniste in view of Shankar to include the endpoint defined bandwidth

of Vaid.

It would have been obvious at the time the invention was made to a person of

ordinary skill in the art to modify the invention in order to maintain Quality of Service

over the network.

Regarding claim 11, Benveniste teaches: monitoring messages transmitted in

packet mode, implemented by the monitoring server (20, 22), which also processes

session initialization packets. ("communication resource usage" Benveniste paragraph

[0018])

Regarding claim 13, Benveniste teaches: wherein the session initialization

messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation

Protocol Benveniste paragraph [0004])


Claims 3, 12, 14, are rejected under 35 U.S.C. 103(a) as being unpatentable

over Benveniste, in view of Shankar, in further view of Chen et al. (US 6,487,170).

Concerning claim 3, Benveniste, in view of Shankar teaches substantially the

claimed limitations, as shown under claim 1. Concerning the further limitations of claim

3, this combination does not explicitly state that average initialization packet bandwidth

is calculated over a preset time.

Chen teaches an average (Chen column 11 line 36) initialization packet ("premium bandwidth" Chen column 11 line 36) bandwidth that is calculated over a preset time ("evaluation interval" Chen column 11 line 30).

A person of ordinary skill in the art would have modified the communication resource usage measurement of Benveniste in view of Shankar to include the average premium service usage measurement of Chen by monitoring the average packet size of the initialization packets.

It would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the invention in order to determine the bandwidth being utilized by a subscriber.

Regarding claim 12, Benveniste teaches: monitoring messages transmitted in packet mode, implemented by the monitoring server (20, 22), which also processes session initialization packets. ("communication resource usage" Benveniste paragraph [0018])

Regarding claim 14, Benveniste teaches: wherein the session initialization messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation Protocol Benveniste paragraph [0004])


Claims 5, 6, 16, 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benveniste, in view of Shankar, in further view of Ballew (Managing IP Networks with Cisco Routers).

Concerning claim 5, Benveniste, in view of Shankar teaches substantially the claimed limitations, as shown under claim 4. Concerning the further limitations of claim 5, this combination does not explicitly state that initialization packets are forcibly routed to the monitoring server.

Ballew discloses forcibly routing packets in the 'Advantages of Static Routing' section, on page 2.

A person of ordinary skill in the art would have modified the access points of Benveniste in view of Shankar to include static routs as shown in Ballew.

It would have been obvious at the time the invention was made to a person of ordinary skill in the art to make this modification in order to remove overhead on the network links.

Concerning claim 6, Benveniste, in view of Shankar teaches substantially the claimed limitations, as shown under claim 4. Concerning the further limitations of claim 6, this combination does not explicitly state that initialization packets are forcibly routed to the processor server.

Ballew discloses forcibly routing packets in the 'Advantages of Static Routing' section, on page 2.

A person of ordinary skill in the art would have modified the access points of Benveniste in view of Shankar to include static routs as shown in Ballew.

It would have been obvious at the time the invention was made to a person of ordinary skill in the art to make this modification in order to remove overhead on the network links.

Regarding claim 16, Benveniste teaches: wherein the session initialization messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation Protocol Benveniste paragraph [0004])

Regarding claim 17, Benveniste teaches: wherein the session initialization messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation Protocol Benveniste paragraph [0004])

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benveniste, in view of Shankar, in view of Vaid, in further view of Chen.

Concerning claim 10, Benveniste, in view of Shankar teaches substantially the claimed limitations, as shown under claim 2. Concerning the further limitations of claim 10, this combination does not explicitly state that average initialization packet bandwidth is calculated over a preset time.

Chen teaches an average (Chen column 11 line 36) initialization packet ("premium bandwidth" Chen column 11 line 36) bandwidth that is calculated over a preset time ("evaluation interval" Chen column 11 line 30).

A person of ordinary skill in the art would have modified the communication resource usage measurement of Benveniste in view of Shankar in view of Vaid to include the average premium service usage measurement of Chen by monitoring the average packet size of the initialization packets.

It would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the invention in order to determine the bandwidth being utilized by a subscriber.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Davies et al. (US 6,839,767) discloses a bandwidth limitation system.

Wiryaman et al. (US 7,010,611) discloses a flow based bandwidth limitation system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chao whose telephone number is (571)270-5657. The examiner can normally be reached on 8-4 Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C./
Examiner, Art Unit 2442

/Andrew Caldwell/
Supervisory Patent Examiner, Art
Unit 2442